

**40 KAR 2:140. Prehearing procedure for rejection, revocation, suspension or refusal to renew registration for business opportunities.**

RELATES TO: KRS 367.801, 367.805(4), 367.990

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.805(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 367.805(4) requires in pertinent part the Office of the Attorney General, Division of Consumer Protection to promulgate administrative regulations pertaining to the operation of business opportunities within the Commonwealth. This administrative regulation sets forth initial procedures for a due process hearing for the rejection, revocation, suspension, or refusal to renew a registration.

Section 1. Notice of Hearing. (1) Prior to rejecting, revoking, suspending, or refusing to renew the business opportunity's registration, the Attorney General shall send by registered or certified mail written notice stating the action to be taken, the grounds for the action, and the date the hearing will be held.

(2) The notice shall be delivered to the business opportunity at his/her most recent address, as listed in the registration statement.

(3) Within seven (7) calendar days after receiving a notice that filing requirements as set forth in KRS 367.805 are not satisfied, the business opportunity may request a hearing.

(4) The hearing shall be held within fourteen (14) calendar days of the Attorney General's receipt of the request for a hearing.

Section 2. Complaints and Answers. (1) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(2) A complaint shall be notarized.

(3) Exhibits or other documents, shall be attached to the complaint.

(4) A copy of the complaint and attachments shall be served on the business opportunity by the hearing officer:

(a) At the last known address of the business opportunity;

(b) By certified mail, return receipt requested.

(5)(a) The business opportunity shall file with the hearing officer an answer to the complaint.

(b) The answer shall be notarized.

(c) The answer shall be filed with the hearing officer within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on complainant by the business opportunity by certified mail, return receipt requested to the address shown on the complaint.

Section 3. Motions, requests, filings, and other material filed with the hearing officer shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 4. Witnesses. A party shall file a list of his witnesses:

(1) With the hearing officer;

(2) At least ten (10) days prior to the hearing.

Section 5. Subpoenas. (1) A party shall file a written request to the presiding officer at least twenty (20) days prior to a hearing if he wishes to:

(a) Subpoena a witness; or

(b) Require the production of a document.

(2) The request shall contain the:

- (a) Name and address of residence and place of employment, including county, of the witness;
- (b) Name of document or item, with a description sufficient to identify the document or item.

Section 6. Continuance. (1) A hearing may be continued by the presiding officer:

- (a) To permit any prehearing procedures; or
- (b) For other good cause.

(2) If it is necessary to continue a hearing, the presiding officer shall:

- (a) Reschedule the hearing; and
- (b) Notify the parties.

(3) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the presiding officer at least seven (7) working days before the hearing.

(4) A motion for continuance may be filed upon the occurrence of an emergency.

(5) The hearing officer shall notify a party of his decision in writing.

Section 7. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:

- (a) On his own motion; or
- (b) Upon motion of a party.

(2) The hearing officer shall schedule a prehearing conference if he determines that it will:

- (a) 1. Establish stipulations;
- 2. Clarify issues;
- 3. Identify witnesses;
- 4. Resolve issues relating to:
  - a. Evidence;
  - b. Subpoenas;
  - c. Discovery; or
  - d. Protective orders; and
- (b) Otherwise promote the orderly and prompt conduct of the hearing; or
- (c) Promote settlement of the issues.

(3) If the prehearing officer schedules a prehearing conference, he shall notify the parties in writing:

- (a) Of the date, time and place of the prehearing conference; and
- (b) That they are required to attend the prehearing conference.

(4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.

(b) A copy of the prehearing order shall be mailed to the parties.

Section 8. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.

(2) The request shall:

- (a) Specify the type of discovery requested;
- (b) Where applicable, describe in sufficient detail:

- 1. Names and addresses of persons or items;
- 2. Documents, other items, or places; and
- (c) State the reason discovery is requested.

(3) The hearing officer may deny, limit, or require discovery.

(4) Discovery may be obtained by:

- (a) Written or oral depositions;
- (b) Interrogatories;

- (c) Production or inspection of documents or things;
- (d) Permission to photograph, or enter upon land or other property; or
- (e) Physical or mental examinations.

Section 9. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.

(2) A settlement agreement:

(a) Shall be subject to approval by the hearing officer; and

(b) If approved by the hearing officer, shall constitute:

1. A waiver of a party's right to an administrative hearing; and
2. The final order of the hearing officer.

Section 10. Motions. A motion shall be:

(1) In writing;

(2) Signed; and

(3) Filed with hearing officer. (21 Ky.R. 697; Am. 1290; eff. 10-12-94.)